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File No. O. Road Transport-150 Legal Department-A **BRANCH**

Subject:— Opinions under the Road Transport— Act, 1948.

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The point raised for the consideration of the R.L.A. is whether an oath in the form at page 3 ante can be included in the conditions of service of the members of the board which are to be determined by the State Government under clause 6 of Government Notification, Home Department No.1780/5 dated the 16th November 1949.

The proposal is not legally feasible for the following reasons.

1. The effect of the proposed condition would be that a person contravening the said condition shall incur disqualification for continuing as a member. Even though it has been held in the Secretary of State for India v. I.M.Lall, F.C.R. 1945, p. 103 that the conditions of service also includes the conditions under which a person may shall be discharged from service, such extreme penalty cannot legally be provided for under a notification issued under the Road Transport Corporation Act, 1948 in the absence of any such specific provision in the said Act.

2. It would be seen from Government Notification, Home Department No.1780/5, dated the 16th November 1949, that the Board consists of 9 members including the Chairmen. The following 2 members are ex-officio members -

(1) One member shall be a person representing the Railways operating in the Province and to be appointed by the Central Government.

(2) The Provincial Motor Transport Controller Bombay.

The power also is given to Government to appoint an expert in ~~finance and a~~

an expert in finance and an expert in transport and engineering. Among the latter there may be or may not be a Government officer. In the case of ex-officio members the condition that if they reveal any matter in their possession in respect of t he corporation they shall be disqualified for continuing to be members is practically of no effect since they are bound to continue as members by virtue of their offices as provided in the Notification if-x self.

For the above reasons the better course would be insert a provision in the Road Transport Corporation Bill, 1949 on the lines of section 11 and 14 of the Atomic Energy Act, 1948 or to disqualify a member from being a member of the C Corporation by inserting the necessary provision in clause 6 of the Parliament Bill No. 82 of 1949, providing for the incorporation and regulation of Road Transport Corporation.

Id/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to H.D.No.5148,dated the 15th April 1950.

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Office of the R.L.A.

Road Transport Corporation Act,1948: Whether Govt. can control recruitment of staff of the Bombay State Road Transport Corporation.

The view taken by the Secretary, Home Department, is correct. Clause 12 of the Home Department Notification No.1780/5, dated 16th November 1949, appointing the Bombay State Road Transport Corporation empowers the Board to appoint a Secretary and provides for its power to appoint such other officers and servants for the performance of its functions under this notification on such terms as to salary remuneration etc. and such other conditions of service, including dismissal, removal, suspension and imposition of penalties as may be determined by regulations made under this notification. It is clear from this provision that the power to appoint a Secretary vests in the Board unconditionally, whereas the power to appoint other officers and servants is subjects to the regulations made under this notification. The regulations can only provide for conditions service. A reference to articles 309 and 312 of the Constitution shows that recruitment is not included in the expression "conditions of service". Besides the enumeration in clause 12 while it includes dismissal etc. makes no mention of recruitment. It would, therefore, seem that as clause 12 stands at present the regulations cannot cover the subject of recruitment, including the method and agency of recruitment Once the posts are determined by the regulations, the power to appoint to such posts vests in the Board absolutely. It would, therefore, be competent for the Board to make appointments to such posts either on its own

initiative or through any Commission appointed by it. It is a matter entirely within the discretion of the Board and Government has no power to impose any restrictions inx the matter of recruitment to these posts. If it is intended t at regulations should be framed regarding the method and agency of recruitment, Clause 12 may be suitably amended. Attention is also invited to article 321 of the Constitution whereunder the function can be assigned by appropriate legislation to the Bombay Public Service Commission.

Id/- (P.H.L.)

Remembrancer of Legal Affairs

U.R. to H.D.No.7998,dated 13th June 1950.

H.D.P.
7/7/56

S.C.